

Formal Action # 98-3740-III

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

NATIONAL FULFILLMENT, INC.,
a domestic corporation,
Respondent.

Petition

John Knox Walkup, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tennessee Code Annotated section 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated the acts and practices of Respondent National Fulfillment, Inc. Upon completion of such investigation, the Division has determined that certain of Respondent's acts and practices, more specifically described in paragraph two of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tennessee Code Annotated section 47-18-104(a), and further that such acts and practices constitute violations of Tennessee Code Annotated

sections 47-18-104(a), (b)(2), (b)(3), (b)(5), (b)(9), (b)(10), (b)(11), (b)(12), (b)(19), (b)(21) and (b)(27).

2. Based upon their investigation of Respondent, the Division and the Attorney General allege the following:

(A) In violation of Federal Trade Commission's Mail and Telephonic Rule, 16 C.F.R. part 435, Respondent accepted monies from consumers for products that it did not have available for shipment at that time and made no attempt to notify the consumers that the consumers would not receive their ordered product within the advertised time or within thirty days thereby denying the consumers the right to cancel the order and receive a full refund;

(B) In some cases in which refunds were due consumers, Respondent was unable to provide timely refunds to consumers; and

(C) In some situations, Respondent told consumers that the reason Respondent could not accept credit-card orders was because of "an incredible low price" when the actual reason was that Respondent's client had lost its ability to accept and process credit-card orders.

(D) Respondent's conduct constitutes unfair and deceptive acts or practices as defined by the Tennessee Consumer Protection Act and interpreting case law.

3. Respondents deny the allegations of Paragraph 2 (A-D).

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tennessee Code Annotated section 47-18-107.

5. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tennessee Code Annotated section 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in paragraph two hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tennessee Code Annotated sections 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Act.